INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Opinion below	2
Questions presented	3
Statutes involved	3
Constitutional provisions involved	3
Matters related to jurisdiction	4
Timeliness	4
Nature of case	4
How constitutional questions raised	5
District Court of Appeal the court of last resort	5
Statutory provisions sustaining jurisdiction	6
Statement of the case	7
The questions are substantial	8
Conclusion	9
Appendix "A"—Order of the District Court of Appeal	10
Appendix "B"—Order of the Supreme Court of California	10
Appendix "C"—Applicable statutes	10

Table of Cases Cited

American Express Co. v. *Levee*, 263 U. S. 19	6
Callan v. *Bransford*, 139 U. S. 197	6
Sullivan v. *Texas*, 207 U. S. 416	6

Statutes Cited

Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54 as amended, by the Act of April 26, 1928, Chapter 440, 45 Stat. 466	6
Constitution of the United States:	
First Amendment	2, 3
Fourteenth Amendment	2, 3, 4
Education Code of the State of California, Sections 19431-19439	3
Judicial Code, Section 237(a) (28 U.S.C. 1257 (2))	6

CALIFORNIA SECOND DISTRICT COURT OF APPEAL

Civil No. 18,118

SHIELD HALVAJIAN, THOMAS GOWAN, LEON BOONE, HAROLD BURT, CLAYTON HALVAJIAN, OSCAR NAVARETTE, LOREN DALTON AND MORRIS HANSON, FOR AND IN BEHALF OF INGLEWOOD, CALIFORNIA, COMPANY OF JEHOVAH'S WITNESSES, AND WATCHTOWER BIBLE AND TRACT SOCIETY, INC., *Appellants,*

vs.

BOARD OF EDUCATION OF THE CITY OF INGLEWOOD, CALIFORNIA, CHARLES L. BLEK, A. O. DUER, W. J. BEUCHEL, EVELYN M. ZILLGITT, AND ROBERT E. CRALLE, *Appellees*

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

STATEMENT AS TO JURISDICTION

Appellants file their statement disclosing the basis upon which they contend that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question pursuant to Rule 12 (1) of the Rules of the Supreme Court of the United States, as amended April 6, 1942.

Opinion Below

The courts below wrote no opinions whatever. The order of the District Court of Appeal is made a part of this statement as Appendix A. The Supreme Court of California denied hearing without an opinion. The order is made part of this statement as Appendix B.

Questions Presented

I

Did the appellees and the courts of California construe the separation clause of the First Amendment to the United States Constitution contrary to the intent of the framers of the amendment because they precluded the state from allowing religious assemblies in public civic centers while permitting other types of assemblies?

II

Does the construction of the Civic Center Act so as to prohibit religious assemblies in the civic centers of California abridge appellants' freedoms of assembly, speech and worship contrary to the First and Fourteenth Amendments to the United States Constitution?

III

Does the construction of the Civic Center Act so as to prevent religious assemblies by the appellants while allowing similar and other meetings by all other groups in the public civic centers of California abridge the civil liberties of appellants contrary to the equal protection clause of the Fourteenth Amendment to the United States Constitution?

Statutes Involved

This case draws into question the validity of state legislation known as the Civic Center Act of California, being sections 19431-19439 of the Education Code of California, the primary section of which reads as follows:

> There is a civic center at each and every public school building and grounds within the State where the citizens, parent-teachers' association, Campfire Girls, Boy Scout troops, farmers' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities and where they may meet and discuss, from time to time, as they may desire, any subjects and questions which in their judgment appertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside.

The above statute was construed and applied to the admitted allegation of facts showing that the appellants are entitled to use the school auditorium as requested and that the appellees discriminated against the appellants in their exercise of the right of freedom of speech and freedom of assembly and freedom of worship, guaranteed against abridgment by the First and Fourteenth Amendments to the United States Constitution. The entire Civic Center Act appears as Appendix C to this statement.

Constitutional Provisions Involved

The First Amendment, relied upon in this case, reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the

> press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The pertinent parts of the Fourteenth Amendment which appellants rely upon read as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Matters Related to Jurisdiction

Timeliness

The judgment of the District Court of Appeal, Second District, denying the original petition for writ of mandamus was entered on September 11, 1950. The judgment of the Supreme Court of California was rendered on the 9th day of November, 1950, and entered on the 9th day of November, 1950, whereupon the judgment denying the writ of mandate made by the District Court of Appeal became final. This appeal is duly presented and filed within ninety days from the date such judgment of the District Court of Appeal, Second District, became final. This appeal is therefore timely.

Nature of Case

This is an original action for a writ of mandamus brought by the appellants in the District Court of Appeal for the Second District at Los Angeles, California, to compel the issuance of a permit to allow the appellants to use one of the school auditoriums opened up by the Civic Center Act of California.

How Constitutional Questions Raised

In the petition for writ of mandamus the appellants attacked the constitutionality of the Act. In Paragraph XIV page 8 of the petition appellants claimed that the denial of the application denied them rights guaranteed by the Constitution. In Paragraph XV page 8 appellants alleged that appellees "have allowed other organizations to use the said auditorium, . . . the same as the use proposed by the petitioners", and that the appellees' actions were in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. In Paragraph XVI of the petition the appellants alleged that the construction placed upon the Civic Center Act so as to deny to appellants the right to use the auditorium in question violated their rights guaranteed by the First and Fourteenth Amendments to the United States Constitution. The District Court of Appeal denied the petition for writ of mandate. See Appendix A. The Supreme Court of California refused the application for hearing. See Appendix B. These determinations constituted, together with the petition for writ of mandamus, the proper raising of the constitutional questions and an adequate showing to this Court that they were determined by the Courts of California pursuant to Rule 12 (1) of the Rules of this Court.

District Court of Appeal the Court of Last Resort

The District Court of Appeal, Second District, was the highest court in the State of California in which a decision could be had in this cause, although such court is not the highest court in the State of California. The order denying the writ of mandamus in an original action in that court was not susceptible of further review as of right in the state courts, and all proper steps were taken to secure

further review by presenting an application for a hearing and for a writ of mandamus by the Supreme Court after denial without opinion by the District Court of Appeal of petition for mandamus to the Supreme Court of California. It refused to exercise its discretionary power and allow a hearing and review of the decision by the Court of Appeal. See the order denying a hearing, Appendix B.

The District Court of Appeal, Second District, an appellate court having original jurisdiction in suits for mandamus rendered the judgment upon which the appeal herein is taken. Said judgment of said intermediate state court was rendered upon an original application for a writ of mandamus, which is proper according to California procedure.

The Supreme Court of the United States has held that where a judgment of a court is subject to discretionary review and such review is exhausted, the appeal may be taken directly to the Supreme Court of the United States, even though the judgment appealed from may be that of an intermediate court of the state. *Sullivan* v. *Texas,* 207 U. S. 416, 422; *American Express Co.* v. *Levee,* 263 U. S. 19, 20-21; *Callan* v. *Bransford,* 139 U. S. 197.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 1257 (2).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. This case presents a state of facts within the jurisdiction of this Court.

Statement of the Case

The petition for writ of mandamus was filed with the District Court of Appeal, Second District, at Los Angeles. The petition showed that the appellants were qualified to apply for the use of the auditorium and that the appellees were under an obligation to issue a permit for the use of the auditorium located in the George W. Crozier School at Inglewood, California. (1-4)[1]

The application for permission to use the auditorium was referred to the County Counsel of Los Angeles who advised that it was unlawful and unconstitutional to permit appellants to use the auditorium for a religious assembly. On May 19, 1950 appellees notified appellants that the application would be denied on the grounds stated by the County Counsel. See paragraph X. (5)

Appellants planned to hold a series of meetings in the auditorium for the purpose of "improvement of personal character and contributing to the civic and general welfare of the community." The meetings would not interfere with the use of the premises for school purposes. The application was within the Civic Center Act. (5-7)

Appellants alleged that the application was made in the form and manner required by law and that it was the absolute duty of the appellees to make available to the appellants the use of the auditorium on the dates requested. Appellants alleged that they would pay the expense for the use of the auditorium. (7)

It was alleged that the construction and application of the Act so as to refuse appellants the requested permit was

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[1] Figures appearing in parentheses refer to pages of printed petition for writ of mandamus filed in District Court of Appeal which is a part of the record in this case.

an abridgment of appellants' rights to freedom of speech, assembly and worship, contrary to the Federal Constitution. See paragraphs XIV, XV and XVI. (8-9)

The Questions Are Substantial

The federal questions involved on this appeal are identical to those presented in the companion case styled *Clayton H. Lyon et al.* v. *Compton Union High School and Junior College District et al.*, Civil No. 18119.

The substantiality of the questions if discussed here would be identical to those discussed in that companion case. See the discussion on the substantiality of the questions involved appearing under the heading "The Questions are Substantial" in the Statement As To Jurisdiction, in the companion case, which argument and discussion is here referred to and made a part hereof as though copied at length herein.

Conclusion

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the Court, because the District Court of Appeal, Second District, State of California, at Los Angeles, disposed of important and substantial federal questions in a way that is in conflict with the Constitution of the United States and applicable decisions of the Supreme Court of the United States, and has so radically and far departed from the Constitution of the United States and the accepted sound course of judicial procedure as to call for exercise by the Supreme Court of the United States of its power of supervision and review to halt the same.

Respectfully submitted,

HAROLD SHIRE,
208 South Beverly Drive,
Beverly Hills, California;

HAYDEN C. COVINGTON,
124 Columbia Heights,
Brooklyn 2, New York,
Attorneys for Appellants.

APPENDIX "A"

ORDER OF THE DISTRICT COURT OF APPEAL SECOND DISTRICT

September 11, 1950.

By the COURT:

Petition for writ of mandate is denied.

WHITE,
Presiding Justice.
J. E. BROWN,
Clerk.

APPENDIX "B"

CLERK'S OFFICE, SUPREME COURT

San Francisco, California,
November 9, 1950.

I have this day filed ORDER: HEARING DENIED in re: 2 Civ. No. 18118, Halvajian, et al. vs. Bd. of Education, City of Inglewood, et al.

Respectfully,

WILLIAM I. SULLIVAN,
Clerk.

APPENDIX "C"

CIVIC CENTER ACT OF CALIFORNIA

The complete text of the Civic Center Act of California is set forth in Appendix C of the companion case to this, Clayton H. Lyon et al. v. Compton Union High School and Junior College District, et al., Civil No. 18,119, at pages 23-26, and is referred to herein and made a part hereof as though copied at length herein.

FILED
MAR 21 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 628

SHIELD HALVAJIAN, THOMAS GOWAN, LEON BOONE, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF INGLEWOOD, CALIFORNIA, ET AL.

APPEAL FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

HAROLD W. KENNEDY,
WM. E. LAMOREAUX,
Counsel for Appellees.

INDEX

Subject Index

	Page
Statement opposing jurisdiction and motion to dismiss or affirm	1
Statement of the case	1

Table of Cases Cited

Adams v. *Russell*, 229 U. S. 353	4
Brougher v. *Board of Public Works*, 107 Cal. 140, 290 Pac. 140	5
City of Oakland v. *Williams*, 99 Cal. App. 754, 290 Pac. 1044	5
Everson v. *Board of Education*, 330 U. S. 1	9
First National Bank v. *Tax Commission*, 289 U. S. 60	9
Funeral Directors' Association v. *Board of Funeral Directors*, 67 Cal. App. (2d) 311, 154 Pac. (2d) 39	4
Hannegan v. *Esquire*, 327 U. S. 146	9
Lynch v. *New York, ex rel. Pierson*, 295 U. S. 53	4
Madden v. *Kentucky*, 309 U. S. 83	9
Milwaukee County v. *Carter*, 45 N. W. (2d) 90	8
Morf v. *Bingman*, 298 U. S. 407	9
Pacific State Co. v. *White*, 296 U. S. 176	9
Redmond v. *Thieler*, 100 Cal. App. 188, 290 Pac. 919	5
Roma Macaroni Factory v. *Giambastiani*, 219 Cal. 435, 27 Pac. (2d) 371	5
Skinner v. *Oklahoma*, 316 U. S. 535	9
Woods v. *Nierstheimer*, 328 U. S. 211	4

Statutes Cited

Civic Center Act (Stats. 1943, Ch. 71, p. 690)	2
Constitution of California, Article IV, Section 30	2, 7
Education Code of California:	
Section 19431	2, 3
Section 19437	7
Rules on Original Proceedings in Reviewing Courts of California, Rule 56(a)	5

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

2nd Civ. 18,118

SHIELD HALVAJIAN, THOMAS GOWAN, LEON BOONE, HAROLD BURT, CLAYTON HALVAJIAN, OSCAR NAVARETTE, LOREN DALTON AND MORRIS HANSON, FOR AND IN BEHALF OF INGLEWOOD, CALIFORNIA COMPANY OF JEHOVAH'S WITNESSES, AND WATCHTOWER BIBLE AND TRACT SOCIETY, INC.,

Petitioners-Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF INGLEWOOD, CALIFORNIA, CHARLES L. BLEK, A. O. DUER, W. J. BEUCHEL, EVELYN M. ZILIGITT AND ROBERT E. CRALLE,

Respondents-Appellees

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

The appellees in the above entitled cause for their statement in opposition to appellants' statement as to jurisdiction herein, and in support of appellees' Motion to Dismiss or Affirm, respectfully show the following:

Statement of Case

Appellants filed their petition for writ of mandate seeking to compel the appellees to permit the use of the audi-

torium of the GEORGE W. CROZIER SCHOOL for religious meetings. The appellants' application to the appellees for such permit set forth that they were religious organizations, desired to use the auditorium for religious lectures and sermons, and that their application was made pursuant to the provisions of sections 19431, et seq. of the Education Code of the State of California, commonly known as the Civic Center Act. (Stats. 1943, Ch. 71, p. 690)

Section 19431 of the Education Code reads, as follows:

> "There is a civic center at each and every public school building and grounds within the State where the citizens, parent-teachers' association, Campfire Girls, Boy Scout troops, farmers' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any subjects and questions which in their judgment appertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside. Governing boards of the school districts may authorize the use, by such citizens and organizations of any other properties under their control, for supervised recreational activities."

Permission was refused by the appellees on the ground that the appellants and the purposes for which they desired use of the auditorium did not come within the provisions of said section. In the Court below the petition for the writ was resisted by the appellees upon this ground and upon the further ground that section 30, Article IV of the State Constitution prohibits such use. Section 30, Article IV of the Constitution reads, as follows:

> "Neither the Legislature, nor any county, city and county, township, school district, or other municipal

corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 22 of this article."

The District Court of Appeal denied the petition for the writ.

Appellees state the following matters and grounds against the jurisdiction of this Court:

(1) Appellant Watchtower Bible and Tract Society, Inc. is a foreign corporation and as such had no standing to challenge the action of the appellees.

The use of public school buildings under the provision of the Civic Center Act is limited so far as here material to "associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts. . . ." (Sec. 19431, Education Code)

According to the allegations of Paragraph IV of the Petition for Writ of Mandamus appellant is a New York corporation, chartered for the purposes of evangelistic preaching and the dissemination of Bible information. It is obviously not an organization of the school district and, therefore, was not entitled in the first instance to apply for use of the school auditorium. It, therefore, has no standing to challenge the validity under the Federal Constitution of the State statute here involved. Mandamus will not lie where the petitioner fails to show that the writ will sub-

serve or protect some right or interest of the petitioner as a party beneficially interested.

Funeral Directors' Association v. *Board of Funeral Directors,* 67 Cal. App. (2) 311; 154 Pac. (2) 39.

(2) The decision below rests upon adequate non-federal grounds.

Non-federal grounds were asserted by appellants in the Court below as a basis for the writ of mandate prayed for. The lower Court, in its denial of the relief, did not write an opinion. Where non-federal questions are raised in the record but no opinion is delivered by the highest State Court in rendering judgment, it will be presumed that the decision is based upon a non-federal ground adequate to support it. In other words, appellants must affirmatively show that it was necessary for the State Court to pass on a Federal question in reaching its decision.

Woods v. *Nierstheimer,* 328 U. S. 211;
Adams v. *Russell,* 229 U. S. 353, 358;
Lynch v. *N. Y. ex rel Pierson,* 295 U. S. 53, 54-55.

The following non-federal questions were raised in the record:

(a) Were the appellants properly before the District Court of Appeal?

This question was raised by the allegations of paragraph XVIII (p. 9 and 10) of the petition, as follows:

> "This petition for writ of mandamus is filed with this Court instead of with a lower Court of the State of California for the following reasons: . . ."

Then follow four reasons by which appellants attempt to justify their failure to file the petition in a lower Court. Such an allegation is necessary when an application for a prerogative writ is filed in the District Court of Appeal.

Rule 56(a), Rules on Original Proceedings in Reviewing Courts, reads as follows:

> "A petition to a reviewing court for a writ of mandate, certiorari, or prohibition, or for any other writ within its original jurisdiction, must be verified and shall set forth the matters required by law to support the petition, and also the following: (1) If the petition might lawfully have been made to a lower court in the first instance, it shall set forth the circumstances which, in the opinion of the petitioner render it proper that the writ should issue originally from the reviewing court; and (2) if any judge, court, board, or other officer or tribunal in the discharge of duties of a public character be named therein as respondent, the petition shall disclose the name of the real party in interest, if any, or the party whose interest, would be directly affected by the proceeding."

This rule has been held valid.

Brougher v. *Board of Public Works*, 107 Cal. 140; 290 Pac. 140.

Roma Macaroni Factory v. *Giambastiani*, 219 Cal. 435; 27 Pac. (2) 371.

Applications for prerogative writs should first be made to the Superior Court unless they are directed to that Court itself.

Roma Macaroni Factory v. *Giambastiani, supra.*

When application is made in the first instance to one of the higher courts, the first duty of that court is to decide whether or not sufficient justification for applying to that court has been shown. A decision adverse to the applicant upon this point is an adequate ground for denying the petition for the writ.

Redmond v. *Thieler*, 100 Cal. App. 188; 290 Pac. 919.

City of Oakland v. *Williams*, 99 Cal. App. 754; 290 Pac. 1044.

In the instant case it must be presumed that the decision of the District Court of Appeal in denying the writ and of the Supreme Court in refusing to grant a hearing therein was based upon this point.

(b) Did the application for permission to use the school auditorium come within the provision of section 19431, Education Code?

The appellants asserted in the lower court that they had an absolute right to use the auditorium under the provision of the Civic Center Act. They asserted in effect that they were one of the organizations named therein and the use was one of the uses authorized therein. Their allegations in this respect are as follows:

> "The petitioners have an absolute right to use said auditorium because their application was in compliance with the sections of the Civic Center Act regarding the use of school property for lawful purposes." (Par. XII, p. 6, Petition for Writ of Mandate.)

The purposes for which they desired to use the auditorium are set forth in paragraphs VIII, IX and X, pages 4 and 5 of the petition and in paragraph VII, Appendix A thereof.

There was thus placed before the lower court the clear non-federal issue of whether or not these appellants and the purpose for which they requested use of the auditorium were included within the provision of section 19431 of the Education Code, which section precisely defines the type of organizations who have the right to use the school property and the purposes for which they may be used. The presumption is clear in the absence of any affirmative showing by appellants that the judgment of the lower court was based upon a non-federal ground, that is, upon its conclusion that the appellants did not come within the terms of section 19431, Education Code. This constitutes an adequate non-federal ground to justify the Court's decision.

(c) Section 30, Article IV of the State Constitution prohibits the use of the school auditorium by the appellants under the Civic Center Act.

This non-federal question was posed to the lower court by reason of the allegations referring to the constitutional section contained in Paragraphs II, III, IV and VIII, pages 2, 3 and 4, and sub-paragraph 2, Paragraph XVIII, pages 9 and 10, of the Petition for Writ of Mandamus. The allegations therein contained in no uncertain terms assert that the appellants, California Company of Jehovah's Witnesses and Watchtower Bible and Tract Society, are religious organizations. That the individual appellants are evangelists and missionaries engaged in spreading the gospel of their faith and obtaining converts to their church. These allegations show that the spreading of their religious tenets was the sole purpose of the meetings, for the direct benefit of the organizations concerned and, therefore, within the prohibitions insofar as the use of public school property is concerned of Section 30, Article IV of the State Constitution.

Among other sections of the Civic Center Act is Section 19437, Education Code, providing as follows:

> "The use of school houses, property, and grounds pursuant to this chapter shall be granted free."

Thus there was clearly put in issue before the lower Court the question of whether or not permitting appellants to use the school auditorium for the purposes requested would be granting "anything to or in aid of any religious sect, church, creed, or sectarian purpose," in violation of the express terms of the constitutional prohibition. This was a non-federal question clearly adequate to sustain the Court's judgment.

(3) The Federal question asserted by appellants is unsubstantial.

Appellants contended in the Court below that in the application of section 19431 by appellees there was discrimination against them and inferred that other religious groups have been permitted use of the school auditorium for religious purposes, whereas, such use has been denied to them. There is no such showing in the record and if there were the answer would be, under the State statute and Constitution, that appellees should be restrained from permitting such other religious organizations from using the school auditorium.

Appellants assert that there is a denial of the right to free speech and of assembly by reason of the action of appellees. The cases relied upon do not support this contention.

Milwaukee County v. *Carter*, 45 N. W. (2) 90, cited by appellants, held unconstitutional an ordinance prohibiting speeches in public parks on political as well as religious subjects. However, in that case the Court clearly distinguished that situation from the use of public school property and funds to aid religion. In this connection, after quoting section 18 of Article I of the Wisconsin Constitution prohibiting State aid for religious purposes, the Court said, at page 92:

> "However, although under Art. I, sec. 18, Wis. Const., and the decision of this court in the Weiss case, supra, and other cases, and likewise the decision of the United State Supreme Court in the McCollum case, supra, such use of tax-supported public school property and public school funds is prohibited, no such restriction is considered applicable under the recent decisions of the United States Supreme Court to the use of public parks or streets by the people in their constitutional right to peaceably assemble in the free and orderly exercise of their religion and the freedom of speech, and of the press, as provided in the First Amendment to the United States Constitution. . . ." (p. 92)

The case of *Everson* v. *Board of Education*, 330 U. S. 1-74, the school bus transportation case cited by appellants, is likewise not in point. Even thought this Court there upheld a State statute permitting reimbursement from public funds for the cost of transporting pupils to and from parochial schools, it was pointed out that that was a border-line case and that, therefore the intendment should be in favor of the constitutionality of the State statute. Neither the case of *Skinner* v. *Oklahoma*, 316 U. S. 535, the sterilization statute case, nor *Hannegan* v. *Esquire*, 327 U. S. 146, are applicable to the situation here involved, in view of the explicit provision contained in Section 30, Article IV of the State Constitution. No substantial Federal question has therefore been raised.

(4) The appellants in asserting unconstitutional discrimination and deprivation of constitutional rights have the burden of proving actual and injurious, not hypothetical discriminations, and the further burden of negativing every conceivable basis which might support the legislative classification.

Madden v. *Kentucky*, 309 U. S. 83, 88.
Pac. State Co. v. *White*, 296 U. S. 176, 185.

The inequality necessary to justify setting aside the classification must be actual not conjectural, hypothetical or sporadic.

Morf v. *Bingman*, 298 U. C. 407, 412, 413;
First National Bank v. *Tax Commission*, 289 U. S. 60, 64, 65.

There is no showing of discrimination in the case at bar. The purposes for which school auditoriums are made available by the Civic Center Act are purely public and community. The purposes for which appellants are organized

and for which they desire use of the auditorium are purely private and sectarian.

On the foregoing matters and grounds making against the jurisdiction of this Court, appellees respectfully move that the within appeal be dismissed or that the judgment and decree of the District Court of Appeal of the State of California be affirmed.

Respectfully submitted,

HAROLD W. KENNEDY,
County Counsel AND
WM. E. LAMOREAUX,
Deputy County Counsel,
By HAROLD W. KENNEDY,
County Counsel,
Attorneys for Appellees.

Affidavit of Service by Mail

County of Los Angeles,
State of California, ss.:

Elsa Ruth Randall, being first duly sworn, deposes and says:

That affiant is and was at all times herein mentioned a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that affiant's business address is 1100 Hall of Records, City of Los Angles, County of Los Angeles, State of California;

That on the 15th day of February, 1951, affiant served the attached Statement Opposing Jurisdiction and Motion to Dismiss or Affirm upon the attorneys for appellants by depositing a copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box in Los Angles, California, addressed as follows:

Harold Shire, Attorney at Law, 208 S. Beverly Drive, Beverly Hills, California and Hayden C. Covington, Attorney, 124 Columbia Heights, Brooklyn 2, N. Y.,* and that the person on whom said service was made has his office at a place where there is a delivery service by United States mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

Elsa Ruth Randall.

Subscribed and sworn to before me this 15th day of February, 1951. Harold J. Ostly, County Clerk, by G. E. Zilka, Deputy.

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* Memo: This allegation should appear in every instance where service is made under the first clause or portion of Sec. 1012 C. C. P., and there should be stricken from the statement included the expression "resides" or "has his office" depending upon whether the service is made at a residence address or an office address.